IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1888 of 1997

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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Versus

DY DIST DEVELOPMENT OFFICER

Appearance:

1. Special Civil Application No. 1888 of 1997

MR RR VAKIL for Petitioner No. 1

MR RA MISHRA for Respondent No. 1

MR SP HASURKAR, AGP for Respondent No. 1,2-3-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 21/04/2005

ORAL JUDGEMENT

In the present petition, the petitioner has challenged the dismissal order dated 21-1-1989 as well as

the order dated 15-1-1997 by which the appeal of the petitioner against the order of dismissal came to be rejected as being time barred.

Short facts leading to the present petition are that the petitioner, who was working as Talati-cum-Mantri was served with a charge sheet on 20th February, 1987 for certain allegations involving moral turpitude and of misappropriation of public funds. It is the case of the petitioner that for the very same charges two criminal cases No.940/1985 and 1112/1985 were filed against the petitioner. It is also the case of the petitioner that he was acquitted in the said criminal cases by the Judicial Magistrate First Class by an order in the year 1986 and, that therefore, it was not open for the respondents to issue a charge sheet to inquire into the same charges. The respondents, however, continued with the departmental inquiry and after issuing a show cause notice on 3rd August, 1988, by the impugned order dated 21-8-1989, the petitioner came to be dismissed from service. It is the case of the petitioner that when the said inquiry was going on, once again a criminal case was filed against the petitioner for having misappropriated public funds. Here also, the petitioner was acquitted when the Judicial Magistrate First Class by order dated 23rd March, 1992, decided the criminal case No.1147/1988 in favour of the petitioner. The petitioner has stated that against his dismissal order dated 21-1-1989, the petitioner earlier could not approach the Court as he was sure that after his acquittal in the criminal case No.1147/1988, the respondents would reconsider the case and do the needful. Eventually, the petitioner approached this Court by filing Special Civil Application No.5881/1995, which came to be withdrawn on 5-9-1995 to avail the remedy of filing departmental appeal. The departmental appeal of the petitioner, however, came to be rejected on 15-1-1997 holding that the same is delayed by more than six years. The petitioner has, therefore, filed the present petition challenging the said orders.

The main ground raised by the petitioner is that having been acquitted althroughout by the Criminal Court in all the criminal cases, it was not open for the respondents to proceed departmentally for the very same charges. It is contended that after his acquittal in the criminal case No.1147/1988, the department should have taken into account the acquittal of the petitioner and reinstated him in service.

I find that the petitioner was dismissed from service by an order dated 21-1-1989. The petitioner did

not challenge this order before any authority or Court for more than six years. Ultimately, his petition filed before this Court being Special Civil Application No.5881/1995, was withdrawn by him for filing appeal.

The appellate authority correctly found that the appeal is delayed by more than six years and rejected the same. Thus, the petitioner's attempt to challenge his order of dismissal is grossly belated. Additionally, I also find that the disciplinary authority had given full opportunity to the petitioner to defend himself. After finding that the charge of misappropriation of public funds is proved on the basis of available material on record, he came to be dismissed from service. The contention of the petitioner that having been acquitted in the criminal cases, departmental inquiry should not have been initiated and continued, cannot be accepted. In the decision of Govind Das v. State of Bihar & Ors., reported in (1997) 11 SCC 361, the Hon'ble Supreme Court held that standard of proof to prove a charge of misconduct in departmental proceedings is not the same as that required to prove a criminal charge. The acquittal of an employee in the criminal case could not be made the basis for setting aside the order of termination of service passed in the disciplinary proceedings, on the basis of evidence adduced in the departmental inquiry. This view has been reiterated by the Hon'ble Supreme Court in number of decisions thereafter and in particular in the decision of Chairman and Managing Director, United Commercial Bank & Ors., v. P.C.Kakkar reported in AIR 2003 SC 1571. Thus, the main ground of the petitioner that having been acquitted in the criminal case departmental inquiry could not have been conducted, cannot be accepted.

I do not find any reason to interfere with the impugned order for the reasons stated hereinabove. The petition fails and is hereby rejected. Rule is discharged. No order as to costs.

(AKIL KURESHI, J.)
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